

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

EDWIN S. KULUBYA, M.D.

Case No. 800-2015-011052

**Physician's and Surgeon's
Certificate No. G54189**

Respondent

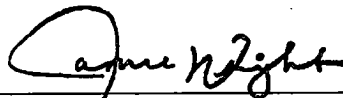
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 1, 2017.

IT IS SO ORDERED: August 3, 2017.

MEDICAL BOARD OF CALIFORNIA



Jamie Wright, JD, Chair
Panel A

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 CHRISTINA L. SEIN
Deputy Attorney General
4 State Bar No. 229094
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **EDWIN KULUBYA, M.D.**
13 **3220 Thatcher Avenue**
Marina Del Rey, CA 90292

14 **Physician's and Surgeon's Certificate No.**
15 **G54189,**

16 Respondent.

Case No. 800-2015-011052

OAH No. 2016090759

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California (Board). She brought this action solely in her official capacity and is represented in
23 this matter by Xavier Becerra, Attorney General of the State of California, by Christina L. Sein,
24 Deputy Attorney General.

25 2. Respondent Edwin Kulubya, M.D. (Respondent) is represented in this proceeding by
26 attorney Jennifer L. Sturges, Esq., whose address is: Carroll, Kelly, Trotter, Franzen, et. al., 111
27 West Ocean Blvd., 14th Floor, Long Beach, CA 90801-5636.

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3. On or about January 7, 1985, the Board issued Physician's and Surgeon's Certificate No. G54189 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-011052, and will expire on March 31, 2018, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-011052 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 15, 2016. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-011052 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-011052. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2015-011052 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

11. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 800-2015-011052 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G54189 issued to Respondent Edwin Kulubya, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **EDUCATION COURSE.** Within 90 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

2. **PRESCRIBING PRACTICES COURSE.** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

4. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 120 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to

1 Respondent's current or intended area of practice. The program shall take into account data
2 obtained from the pre-assessment, self-report forms and interview, and the Decision(s),
3 Accusation(s), and any other information that the Board or its designee deems relevant. The
4 program shall require Respondent's on-site participation for a minimum of 3 and no more than 5
5 days as determined by the program for the assessment and clinical education evaluation.

6 Respondent shall pay all expenses associated with the clinical competence assessment
7 program.

8 At the end of the evaluation, the program will submit a report to the Board or its designee
9 which unequivocally states whether the Respondent has demonstrated the ability to practice
10 safely and independently. Based on Respondent's performance on the clinical competence
11 assessment, the program will advise the Board or its designee of its recommendation(s) for the
12 scope and length of any additional educational or clinical training, evaluation or treatment for any
13 medical condition or psychological condition, or anything else affecting Respondent's practice of
14 medicine. Respondent shall comply with the program's recommendations.

15 Determination as to whether Respondent successfully completed the clinical competence
16 assessment program is solely within the program's jurisdiction.

17 If Respondent fails to enroll, participate in, or successfully complete the clinical
18 competence assessment program within the designated time period, Respondent shall receive a
19 notification from the Board or its designee to cease the practice of medicine within three (3)
20 calendar days after being so notified. The Respondent shall not resume the practice of medicine
21 until enrollment or participation in the outstanding portions of the clinical competence assessment
22 program have been completed. If the Respondent did not successfully complete the clinical
23 competence assessment program, the Respondent shall not resume the practice of medicine until a
24 final decision has been rendered on the accusation and/or a petition to revoke probation. The
25 cessation of practice shall not apply to the reduction of the probationary time period.

26 5. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
27 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
28 monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose

1 licenses are valid and in good standing, and who are preferably American Board of Medical
2 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
3 relationship with Respondent, or other relationship that could reasonably be expected to
4 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
5 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
6 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

7 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
8 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
9 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
10 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
11 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
12 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
13 signed statement for approval by the Board or its designee.

14 Within 60 calendar days of the effective date of this Decision, and continuing throughout
15 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
16 make all records available for immediate inspection and copying on the premises by the monitor
17 at all times during business hours and shall retain the records for the entire term of probation.

18 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
19 date of this Decision, Respondent shall receive a notification from the Board or its designee to
20 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
21 shall cease the practice of medicine until a monitor is approved to provide monitoring
22 responsibility.

23 The monitor(s) shall submit a quarterly written report to the Board or its designee which
24 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
25 are within the standards of practice of medicine, and whether Respondent is practicing medicine
26 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
27 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
28 preceding quarter.

1 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
2 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
3 name and qualifications of a replacement monitor who will be assuming that responsibility within
4 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
5 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
6 notification from the Board or its designee to cease the practice of medicine within three (3)
7 calendar days after being so notified Respondent shall cease the practice of medicine until a
8 replacement monitor is approved and assumes monitoring responsibility.

9 In lieu of a monitor, Respondent may participate in a professional enhancement program
10 approved in advance by the Board or its designee, that includes, at minimum, quarterly chart
11 review, semi-annual practice assessment, and semi-annual review of professional growth and
12 education. Respondent shall participate in the professional enhancement program at Respondent's
13 expense during the term of probation.

14 6. PROHIBITED PRACTICE. During probation, Respondent is prohibited from
15 performing IV sedation for interventional pain procedures. After the effective date of this
16 Decision, all patients being treated by the Respondent with interventional pain procedures, or any
17 patients offered interventional pain procedures, shall be notified that the Respondent is prohibited
18 from performing IV sedation for interventional pain procedures. Any new such patients must be
19 provided this notification at the time of their initial appointment.

20 Respondent shall maintain a log of all patients to whom the required oral notification was
21 made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's
22 medical record number, if available; 3) the full name of the person making the notification; 4) the
23 date the notification was made; and 5) a description of the notification given. Respondent shall
24 keep this log in a separate file or ledger, in chronological order, shall make the log available for
25 immediate inspection and copying on the premises at all times during business hours by the Board
26 or its designee, and shall retain the log for the entire term of probation

27 7. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
28 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the

1 Chief Executive Officer at every hospital where privileges or membership are extended to
2 Respondent, at any other facility where Respondent engages in the practice of medicine,
3 including all physician and locum tenens registries or other similar agencies, and to the Chief
4 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
5 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
6 calendar days.

7 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

8 8. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
9 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
10 advanced practice nurses.

11 9. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
12 governing the practice of medicine in California and remain in full compliance with any court
13 ordered criminal probation, payments, and other orders.

14 10. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
15 under penalty of perjury on forms provided by the Board, stating whether there has been
16 compliance with all the conditions of probation.

17 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
18 of the preceding quarter.

19 11. GENERAL PROBATION REQUIREMENTS.

20 Compliance with Probation Unit

21 Respondent shall comply with the Board's probation unit.

22 Address Changes

23 Respondent shall, at all times, keep the Board informed of Respondent's business and
24 residence addresses, email address (if available), and telephone number. Changes of such
25 addresses shall be immediately communicated in writing to the Board or its designee. Under no
26 circumstances shall a post office box serve as an address of record, except as allowed by Business
27 and Professions Code section 2021(b).

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1 Place of Practice

2 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
3 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
4 facility.

5 License Renewal

6 Respondent shall maintain a current and renewed California physician's and surgeon's
7 license.

8 Travel or Residence Outside California

9 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
10 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
11 (30) calendar days.

12 In the event Respondent should leave the State of California to reside or to practice
13 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
14 departure and return.

15 12. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
16 available in person upon request for interviews either at Respondent's place of business or at the
17 probation unit office, with or without prior notice throughout the term of probation.

18 13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
19 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
20 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
21 defined as any period of time Respondent is not practicing medicine as defined in Business and
22 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
23 patient care, clinical activity or teaching, or other activity as approved by the Board. If
24 Respondent resides in California and is considered to be in non-practice, Respondent shall
25 comply with all terms and conditions of probation. All time spent in an intensive training
26 program which has been approved by the Board or its designee shall not be considered non-
27 practice and does not relieve Respondent from complying with all the terms and conditions of
28 probation. Practicing medicine in another state of the United States or Federal jurisdiction while

1 on probation with the medical licensing authority of that state or jurisdiction shall not be
2 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
3 period of non-practice.

4 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
5 months, Respondent shall successfully complete the Federation of State Medical Board's Special
6 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
7 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
8 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

9 Respondent's period of non-practice while on probation shall not exceed two (2) years.
10 Periods of non-practice will not apply to the reduction of the probationary term.

11 Periods of non-practice for a Respondent residing outside of California, will relieve
12 Respondent of the responsibility to comply with the probationary terms and conditions with the
13 exception of this condition and the following terms and conditions of probation: Obey All Laws;
14 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
15 Controlled Substances; and Biological Fluid Testing.

16 14. COMPLETION OF PROBATION. Respondent shall comply with all financial
17 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
18 completion of probation. Upon successful completion of probation, Respondent's certificate shall
19 be fully restored.

20 15. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
21 of probation is a violation of probation. If Respondent violates probation in any respect, the
22 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
23 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke
24 Probation, or an Interim Suspension Order is filed against Respondent during probation, the
25 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall
26 be extended until the matter is final.

27 16. LICENSE SURRENDER. Following the effective date of this Decision, if
28 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy

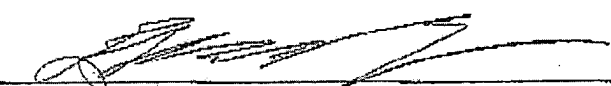
1 the terms and conditions of probation, Respondent may request to surrender his or her license.
2 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
3 determining whether or not to grant the request, or to take any other action deemed appropriate
4 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
5 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
6 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
7 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
8 application shall be treated as a petition for reinstatement of a revoked certificate.

9 17. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
10 with probation monitoring each and every year of probation, as designated by the Board, which
11 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
12 California and delivered to the Board or its designee no later than January 31 of each calendar
13 year.

14 ACCEPTANCE

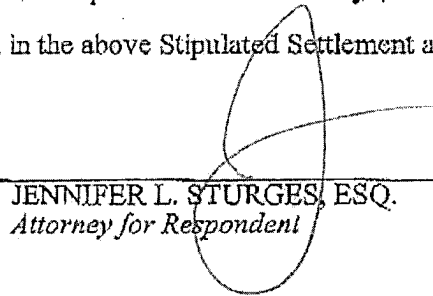
15 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
16 discussed it with my attorney, Jennifer L. Sturges, Esq. I understand the stipulation and the effect
17 it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement
18 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
19 Decision and Order of the Medical Board of California.

20
21 DATED: 3/21/2017


EDWIN KULUBYA, M.D.
Respondent

23 I have read and fully discussed with Respondent Edwin Kulubya, M.D. the terms and
24 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
25 I approve its form and content.

26 DATED: 3/29/2017


JENNIFER L. STURGES, ESQ.
Attorney for Respondent

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Dated: 3/29/17

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

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Exhibit A

Accusation No. 800-2015-011052

1 KAMALA D. HARRIS
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 CHRISTINA L. SEIN
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO JUNE 15 2016
BY: [Signature] ANALYST

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2015-011052

EDWIN KULUBYA, M.D.
3220 Thatcher Avenue
Marina Del Rey, CA 90292

ACCUSATION

Physician's and Surgeon's Certificate
No. G54189,

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about January 7, 1985, the Medical Board issued Physician's and Surgeon's Certificate Number G54189 to Edwin Kulubya, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2018, unless renewed.

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BACKGROUND

7. At all times relevant to the allegations contained herein, Respondent was a licensed physician and surgeon practicing anesthesiology and pain medicine at California Advance Pain Institute.

8. C.B.,¹ then a 64-year-old female, presented to Respondent on or about July 26, 2013 with chronic pain, arthritis, obesity, hypertension, asthma, and gout. Prior to treating with Respondent, C.B. was a patient of J.D., M.D., Respondent's partner, from approximately December 2011 through May 2013.

9. C.B. treated with Respondent approximately every one to three months until October 13, 2014. Her treatment included medication management, IV therapy, and interventional procedures. While under Respondent's care, the controlled substances prescribed to C.B. included oxycodone 30 mg (1 tablet orally every 4 hours, refills of 180 tablets each time) and soma 350 mg (1 tablet orally every 8 hours, refills of 90 tablets each time).

10. At each visit, Respondent reviewed her pain complaints, performed a physical exam, and assessed her progress toward goals using the "4As", *i.e.*, Analgesia, Activities of Daily Living (ADL), Adverse Effects, and Aberrant Drug Taking. It is unclear whether C.B.'s progress was satisfactory due to inconsistencies in Respondent's notes. In the History of Present Illness section of his notes, Respondent writes C.B.'s pain level is 10/10 and that pain increases with certain functions. In assessing the 4As, however, Respondent writes that C.B. admits to good pain relief from the medication and that she can perform certain ADLs without distress.

11. Respondent's treatment plan incorporated medications other than controlled substances, however, there is no documented effort to incorporate active self-management approaches, such as physical therapy or psychological therapies.

12. During the time Respondent cared for C.B., there was no documented discussion by Respondent of the risks and benefits of controlled substances. Although an agreement was signed

¹ Individuals are referred to by initial to protect their privacy.

1 regarding controlled substances in 2011, there is no specific controlled substance agreement
2 between Respondent and C.B.

3 13. On or about October 13, 2014, C.B. underwent an Epidural Steroid Injection at L4-5
4 as well as facet injections at L4-5 and L5-S1 under fluoroscopy with IV sedation using Propofol.
5 The procedure time was noted as 15:18 to 15:33. According to Respondent's procedure note,
6 C.B. was awake at the end of the procedure and the IV and monitors were removed. Shortly
7 thereafter, C.B. became unresponsive and was noted to be in cardiac arrest at 15:43, about 10
8 minutes from the end of the procedure.

9 14. Respondent's procedure note documents intraoperative vital signs, including blood
10 pressure, pulse rate, and oxygen saturation. However, where the patient was at the time of the
11 arrest and who observed the patient to be unresponsive is not delineated in the procedure note.
12 There is no documentation of the dose of Propofol administered to C.B. There is no independent
13 sedation record and no evidence that there was a qualified independent person monitoring the
14 patient and/or administering sedation. There is no preoperative or recovery room record and the
15 names of the personnel taking care of the patient is not documented.

16 15. Resuscitation undertaken immediately following the cardiac arrest is documented in
17 the procedure note. Paramedics arrived and C.B. was transported to the Emergency Room of
18 Anaheim Regional Medical Center.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Gross Negligence)**

21 16. Respondent's license is subject to disciplinary action under section 2234, subdivision
22 (b), of the Code in that he was grossly negligent in his care and treatment of C.B. The
23 circumstances are as follows:

24 17. The standard of care for interventional procedures requires appropriate preoperative
25 patient evaluation, treatment planning, informed consent, and intraoperative and postoperative
26 monitoring.

27 18. Sections 2215 through 2217 of the Code and section 1248.1 of the Health and Safety
28 Code set standards for outpatient facilities where procedural sedation is performed. An outpatient

1 facility where IV procedural sedation is planned to be performed is required to be accredited by
2 one of the recognized accreditation agencies (e.g., Joint Commission, AAAHC, IMQ, etc.).
3 (Health & Saf. Code § 1248.1.; Bus. & Prof. Code § 2216.)

4 19. Accreditation requires that the appropriate equipment, personnel, policies and
5 procedures, and documentation be in place to assure patient safety. In regards to a procedure
6 similar to the one performed by Respondent with IV procedural sedation, an accreditation agency
7 would require documentation of a preoperative evaluation including risk assessment. Appropriate
8 intraoperative monitoring to include documentation of anesthesia risk, vital signs, and drug doses
9 administered is required. Monitoring and drug administration is required to be provided by a
10 licensed person qualified to administer IV drugs and who is not involved in the performance of the
11 procedure itself. Continuous observation in recovery, vital signs monitoring, a recovery record,
12 and patient evaluation prior to discharge is also required. To accredit a facility, additional
13 standards must be met for administrative record keeping, medical staff credentialing, and medical
14 equipment use and maintenance logs.

15 20. Respondent's care and treatment of C.B. as set forth above in Paragraphs 7 through
16 15, include the following acts and/or omissions which constitute extreme departures from the
17 standard of care:

18 A. With respect to the IV sedation of C.B., Respondent's failure to have the
19 necessary documentation regarding the dose of Propofol administered, intraoperative and
20 postoperative monitoring, and the personnel caring for C.B.

21 B. Respondent's administration of IV procedural sedation in an unaccredited
22 facility.

23 21. Respondent's acts and/or omissions as set forth in paragraphs 17 through 20, above,
24 whether proven individually, jointly, or in any combination thereof, constitute gross negligence
25 pursuant to section 2234, subdivision (b), of the Code. Therefore, cause for discipline exists.

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1 C. Inconsistencies in Respondent's documentation make it difficult to determine
2 whether C.B.'s progress toward goals was satisfactory.

3 D. Respondent's lack of effort to incorporate more active self-management
4 approaches with respect to pain management.

5 E. Respondent's failure to directly discuss with C.B. the risks and benefits of
6 controlled substances.

7 F. Respondent's failure to list death as a possible risk of the interventional pain
8 procedure performed on C.B.

9 G. Respondent's administration of IV sedation for the majority of an interventional
10 pain procedure.

11 29. Respondent's acts and/or omissions as set forth in paragraphs 23 through 28, above,
12 whether proven individually, jointly, or in any combination thereof, constitute repeated negligent
13 acts pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Failure to Maintain Adequate and Accurate Records)**

16 30. Respondent's license is subject to disciplinary action under section 2266 of the Code
17 in that he failed to maintain adequate and accurate records of his care and treatment of patient
18 C.B. The circumstances are as follows:

19 31. Complainant refers to and, by this reference, incorporates paragraphs 7 through 15,
20 above, as though set forth fully herein.

21 32. Complainant refers to and, by this reference, realleges the allegations set forth in
22 paragraphs 17, 19, 20(A), 24, 28(C), and 28(F).

23 33. Respondent's acts and/or omissions as set forth in paragraphs 31 through 32, above,
24 whether proven individually, jointly, or in any combination thereof, constitute failure to maintain
25 adequate and accurate records, pursuant to section 2266 of the Code. Therefore, cause for
26 discipline exists.

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DISCIPLINARY CONSIDERATIONS

34. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about March 26, 2004, in a prior disciplinary action entitled *In the Matter of the Accusation Against: Edwin S. Kulubya, M.D.*, before the Medical Board of California, Case No. 18-1999-104643, Respondent's license was placed on probation for five years, including requirements of educational programs, a prescribing practices course, a medical record keeping course, and the passing of an oral and/or written examination. Respondent's license was disciplined for gross negligence, repeated negligent acts, failure to maintain adequate and accurate medical records, and incompetence. That decision is now final and is incorporated by reference as if fully set forth herein.

35. At the time the decision in Case No. 18-1999-104643 became final, Respondent was living and working in Texas. Respondent petitioned for early termination of his probation and in an action entitled *In the Matter of the Petition for Early Termination of Probation of: Edwin Samuel Kulubya, M.D.*, before the Medical Board of California, Case No. 26-2009-202602, Respondent's petition was granted and his probation was reduced from five years to four years with credit for three years of probation served in Texas and time served in California. Accordingly, Respondent did not complete his probation until April 26, 2011. That decision is now final and is incorporated by reference as if fully set forth herein.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Medical Board of California issue a decision:

4 1. Revoking or suspending Physician's and Surgeon's Certificate Number G54189, issued
5 to Edwin Kulubya, M.D.;

6 2. Revoking, suspending or denying approval of Edwin Kulubya, M.D.'s authority to
7 supervise physician assistants, pursuant to section 3527 of the Code;

8 3. Ordering Edwin Kulubya, M.D., if placed on probation, to pay the Board the costs of
9 probation monitoring; and

10 4. Taking such other and further action as deemed necessary and proper.

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12 DATED: June 15, 2016


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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